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OFFICE OF PETITIONS

In re Application of :
Biellak et al. :
Application No. 09/891,693 : ON PETITION
Filed: 26 June, 2001 :
Attorney Docket No. M-10693 US :

This is a decision on the petition under 37 CFR 1.137(b),¹ filed on 27 February, 2003, to revive the above-identified application.

The petition is **DISMISSED AS MOOT.**

This application was held abandoned on 24 April, 2002, for failure to timely respond to the Office action mailed on 24 January, 2002, which set a three (3) month period for reply.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Petitioners filed a reply on 24 July, 2002, accompanied by a three month extension of time. However, that reply did not contain the proper application number. On 3 October, 2002, a petition to withdraw the holding of abandonment was filed. The petition was granted on 5 March, 2003, because the reply filed on 24 July, 2002, had subsequently been matched with the file.

In view of the withdrawal of the holding of abandonment on 5 March, 2003, the petition to revive filed on 27 February, 2003, is moot.

The petition fee, less the \$20.00 fee deficiency owed for additional claims, will be credited to counsel's deposit account, No. 19-2386, as authorized in the transmittal letter filed with the original application papers.

The application file is being forwarded to Technology Center 2800 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



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